

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ELROY W. BROWNING, CASE NO. 1:05-cv-00342-AWI-NEW (DLB) PC

Plaintiff, ORDER ADDRESSING RESPONSE TO COURT'S ORDER DENYING MOTION FOR ISSUANCE OF SUBPOENAS

JEANNE WOODFORD, et al., (Docs. 87 and 88)

Defendants.

Plaintiff Elroy W. Browning (“plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On January 28, 2007, the court issued an order (1) denying plaintiff’s motion seeking the issuance of a subpoena duces tecum directing Warden Scribner to produce documents, filed November 6, 2006, on the ground that plaintiff failed to make the threshold showing in compliance with the court’s orders of October 23, 2006, and (2) denying plaintiff’s motion seeking the issuance of a subpoena duces tecum directing former California Department of Corrections and Rehabilitation Director Jeanne Woodford to produce documents, filed November 22, 2006, on the ground that plaintiff failed to make the threshold showing in compliance with the court’s orders of October 23, 2006. (Doc. 85.) On February 14, 2007, plaintiff filed what he entitled a response to the court’s order, in an attempt to cure the deficiencies identified by the court in its order of January 28. (Docs. 87, 88.)

The deadline for the completion of all discovery was October 30, 2006, with the exception, in relevant part, of plaintiff's request for the issuance of subpoenas duces tecum. The court stated in its order of October 23, 2006, that "[a]lthough the deadline for the completion of all discovery is

1 currently October 30, 2006, the court will allow this issue to be resolved beyond the deadline,
2 including the issuance of a subpoena duces tecum, if necessary.” (Doc. 71, 2:22-25.) Plaintiff was
3 granted thirty days within which to submit a new motion supported by a declaration justifying the
4 need for the documents. Plaintiff filed motions in response to the order on November 6, 2006, and
5 November 22, 2006. Neither motion met the requirements set forth in the court’s order October 23,
6 2006, and in its order denying the motions, the court ordered that “[t]he discovery phase of this
7 litigation is now closed, with the limited exception of any further motions or orders needed to effect
8 production of the discovery sought in requests three and seven.” (Doc. 5:14-16.)

9 The discovery phase of this litigation is concluded with respect to the issuance of subpoenas
10 duces tecum. Plaintiff was given an opportunity to renew his motion, plaintiff did so, and plaintiff’s
11 motion was denied. No further motions on the issue of the issuance of subpoenas duces tecum will
12 be entertained by the court. The sole remaining discovery issue is the production of document
13 request numbers three and seven. On March 19, 2007, plaintiff filed what the court construes to be
14 a motion to compel a further response. The motion has not yet been deemed submitted. Local Rule
15 78-230(m). Once the motion has been deemed submitted, the court will address the motion.

16 Based on the foregoing, plaintiff’s response to the court’s order of January 28, 2007, filed
17 February 14, 2007, is HEREBY DENIED as MOOT.

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19 IT IS SO ORDERED.

20 Dated: March 27, 2007
21 3b142a

22 /s/ Dennis L. Beck
23 UNITED STATES MAGISTRATE JUDGE
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